

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
<p>Caption in Compliance with D.N.J. LBR 9004-2(c)</p> <p>BARCLAY DAMON LLP Scott L. Fleischer, Esq. 1270 Avenue of the Americas, Suite 501 New York, NY 10020 Telephone: (212) 784-5810 Email: sfleischer@barclaydamon.com</p> <p>SINGER & LEVICK, P.C. Michelle E. Shiro Texas State Bar No. 18310900 16200 Addison Road, Suite 140 Addison, Texas 75001 Telephone: 972.380.5533 Fax: 972.380.5748 Email: mshiro@singerlevick.com</p> <p><i>ATTORNEYS FOR West Coast Highway LLC, successor-in-interest to Panattoni Development Company, Inc., successor-in- interest to LRIGF Denton, LLC</i></p>	
<p>In re:</p> <p>BED BATH & BEYOND INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 23-13359 (VFP)</p> <p>Judge: Vincent F. Papalia</p> <p>(Jointly Administered)</p>

**SUPPLEMENT TO LIMITED OBJECTION AND RESERVATION OF RIGHTS
TO DEBTORS' NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND OBJECTION TO
NOTICE OF PHASE 1 SUCCESSFUL BIDDER AND BACKUP BIDDER**

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

COMES NOW, West Coast Highway LLC, successor-in-interest to Panattoni Development Company, Inc., successor-in-interest to LRIGF Denton, LLC (“**West Coast**”), by and through its counsel Singer & Levick, P.C. and Barclay Damon LLP, and files this, its *Supplement to Limited Objection and Reservation of Rights to Debtors’ Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (“**Supplemental Objection**”) and, in support of same, would respectfully show as follows:

1. Debtors are a party to a non-residential real property lease (“**Lease**”) with West Coast (“**Landlord**”) for the property located at 2315 Colorado Blvd, Suite 180, Denton, TX 76205, which is a shopping center within the meaning of Section 365(d)(3) of the BANKRUPTCY CODE. As of the filing of this pleading, the Lease has not been rejected by the Debtors.

2. On April 23, 2023 (“**Petition Date**”), Bed Bath & Beyond, Inc. and its related Debtor entities (together, “**Debtors**”) each filed voluntary Petitions for Chapter 11 protection under Title 11 of the UNITED STATES CODE (“**BANKRUPTCY CODE**”) with the United States Bankruptcy Court for the District of New Jersey (“**Bankruptcy Court**”), which cases have been jointly consolidated for administrative purposes only (“**Chapter 11 Cases**”). The Debtors continue to operate their businesses and manage their properties as Debtors and Debtors-in-Possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On April 25, 2023, the Bankruptcy Court entered the *Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed*

Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief (“Bidding Procedures Order”) (Dkt.092).

4. Pursuant to such Bidding Procedures Order, on June 13, 2023, the Debtors filed their *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (“Assumption Notice”)* (Dkt.714). In addition, this Lease is listed as an acquired asset on the *Notice of Successful and Backup Bidder with Respect to the Phase I Auction of Certain of the Debtors’ Lease Assets And Assumption and Assignment of Certain Unexpired Leases (“Phase 1 Successful Bidder Notice”)* (Dkt.1114).

5. Contained within such Assumption Notice as *Exhibit A* (see Dkt.714: P.6-46) was a listing of the contracts and leases which were subject to such potential assumption and assignment, as well as the proposed cure amounts for each counterparty/Landlord set forth (“**Proposed Cure Amount**”).

6. Landlord West Coast was listed in the Assumption Notice with a proposed cure amount of \$12,541.70. This amount is for the 2022 CAM reconciliation.

7. On July 5, 2023, Landlord West Coast filed its *Limited Objection and Reservation of Rights to Debtors’ Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (Dkt.1178)*, along with a chart attached as Exhibit A which showed the Proposed Cure Amount and the Correct Cure Amount as of June 30, 2023 in the amount of \$32,829.97, which included the accrued CAM obligations through June 2023.

8. This Supplemental Objection is now filed to include the accrued CAM obligations for July 2023 in the amount of \$3,381.31. Pursuant to the terms of the Lease, such CAM obligations will continue to accrue monthly until the Lease is assumed and must be paid to the Landlord by any proposed purchaser of the Lease. Accordingly, the Correct Cure Amount through

the date of this filing is **\$36,211.28**, which consists of the \$12,541.70 for the 2022 reconciliation, plus \$23,669.58 for the accrued CAM obligations for January – July 2023.

9. Landlord West Coast incorporates the Cure Objections, Reservation of Rights and Joinder set forth in its previously filed Objection as if set forth herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, West Coast Highway LLC requests that the Court enter an Order:

- (a) establishing the actual cure amount owed to its Lease consistent with the Correct Cure Amount set forth herein in the amount of \$36,211.28;
- (b) requiring Debtors to comply with all obligations under the Lease pursuant to 11 U.S.C. § 365(d)(3) pending the actual assumption of the Lease;
- (c) requiring Debtors to cure any additional defaults that may occur under its Lease between the date of this Objection and the effective date of any assumption by the proposed purchaser;
- (d) requiring Debtors to ensure that the proposed purchaser be expressly responsible and liable for the payment of any charges that come due under the Lease post-assumption and assignment, including the year-end adjustment, but that may relate to a pre-assumption and assignment period; and
- (e) granting Landlord West Coast Highway LLC such additional and further relief as the Court may deem to be just and proper.

DATED: **July 11, 2023**
 New York, New York

Respectfully submitted,

BARCLAY DAMON LLP

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ATTORNEYS FOR:

WEST COAST HIGHWAY LLC, SUCCESSOR-IN-
INTEREST TO PANATTONI DEVELOPMENT COMPANY,
INC., SUCCESSOR-IN-INTEREST TO LRIGF DENTON,
LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District, which includes the parties as shown below, and via electronic mail as required by the Assumption Notice as shown below, on this 11th day of July, 2023.

<u>Debtors:</u> Bed Bath & Beyond, Inc. 650 Liberty Avenue Union, NJ 07083 VIA ECF Noticing through its Attorneys	<u>Counsel for Debtors:</u> Cole Schotz P.C. 25 Main Street Hackensack, NJ 07601 Attn: Michael D. Sirota Email: msirota@coleschotz.com Attn: Felice R. Yudkin Email: fyudkin@coleschotz.com Attn: Warren A. Usatine Email: wusatine@coleschotz.com Kirkland and Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Joshua A. Sussberg Email: joshua.sussberg@kirkland.com Attn: Emily E. Geier Email: emily.geier@kirkland.com Attn: Derek I. Hunter Email: derek.hunter@kirkland.com Attn: Ross J. Fiedler Email: ross.fiedler@kirkland.com VIA ECF Noticing and/or VIA Email
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/s/ Scott L. Fleischer
Scott L. Fleischer